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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,210	04/20/2004	Benoit Cote		2912

7590 06/20/2006

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EXAMINER

MORAN, KATHERINE M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/827,210

Applicant(s)

COTE, BENOIT

Examiner

Katherine Moran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/28/06, 12/20/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,9 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

Applicant's amendment of 3/28/06 and amendment to the specification of 12/20/05 has been received and reviewed. Applicant amended claim 10 and cancelled claims 6-8.

Specification

1. The amendment filed 12/20/05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "...and no more than 1 inch wide".

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benevento, Jr. et al. (Benevento, U.S. 5,354,607). Benevento discloses the invention substantially as claimed. Benevento teaches a forehead clearing apparatus

comprising a pair of wedge shaped modules 32,33 wherein each of the pair is further comprised of a hook and pile strip 62,63, the strip having a means for permanently bonding to a headband of a hat or cap, the hook strip permanently bonded to the module via sewing. The pile strip 72,73 is sewn and/or glued on the cap such that the module extends over the headband portion of the cap as shown in Figure 1. The modules having a soft corner which can be a bevel or a rounded corner and includes a semi-rigid sponge-like core with a soft outer shell material. The module can be integrated into hats or caps at the manufacturing site if desired. Column 4, lines 34-38 recite that the modules are tapered in shape to define air passage channels 40 between modules. However, Benevento doesn't teach that the module is $\frac{1}{2}$ an inch at its thickest part and no more than one inch wide. Applicant's specification doesn't provide criticality for these particular dimensions and as such, these dimensions could have been arrived at through routine experimentation. The modules appear to be no more than 1 inch wide and $\frac{1}{2}$ inch thick. These dimensions would ensure that the cap still fits the wearer's head properly, and that the modules provide the desired effect.

Response to Arguments

4. Applicant's arguments filed 3/28/06 have been fully considered but they are not persuasive. Applicant submits that Benevento teaches pads adapted to be positioned on a wearer's forehead and as such, is contrarian to the teachings of the present invention. Benevento's structure provides forehead clearing areas as represented by regions 26. Applicant also argues that Benevento fails to teach wedge shaped pads. It

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is noted that Applicant's specification does not define "wedge shaped" in a specific way that would differ from the ordinary and accepted meaning of this phrase. Applicant's arguments further admit that Benevento's pads are tapered across their width but not across their thickness. Applicant's claims do not recite the specific wedge shape referred to by the Applicant as being tapered across their thickness. The prior art rejections are based upon the claim recitations and it is noted that the claims do not recite the structure of the forehead clearing apparatus as being different from that taught by Benevento.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (571) 272-4983. The official and after final fax number for the organization where this application is assigned is (571) 273-8300. General information regarding this application may be obtained by contacting the Group Receptionist at (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

June 13, 2006



Katherine Moran

Primary Examiner, AU 3765